IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.448 OF 2003

Air India Limited,)

A Company incorporated under)

the Companies Act, 1956 having)

its office at Air India Building)

Nariman Point, Mumbai-400 021.)..PETITIONERS

Versus

1. Mr. Jagdish Gursahani,)

B-2/18, Gautam Arcade CHS)

Thane (East)-400 603.)

2. Union of India through the)

Presiding Officer, Central)

Government Industrial Tribunal)

No.1, Sion, Mumbai.)

3.State of Maharashtra, Ministry)

of Labour, Mumbai.)..RESPONDENTS

Mr. S.U. Talsania with Mr. J.Saluja i/b. M.V.Kini & Co.,

for the Petitioners.

Respondent No.1 in person.

CORAM: F.I. REBELLO, J.

DATE : 24th September,2004

ORAL JUDGMENT:

1. The petitioners by the present petition impugns the

order dated 23rd July, 1999 whereby the learned Presiding Officer of the National Industrial Tribunal, Mumbai, held that the enquiry against the respondent No.1 herein is neither fair nor legal and the findings are perverse and granted an opportunity to the petitioners herein to prove the charges against the respondent No.1, as also the subsequent order dated 20th December, 2002 passed in a Review application made by the respondent No.1 herein. By the order in review the learned Presiding Officer considering his earlier findings that the petitioner herein had failed to pay one month's wages in lieu of notice recalled its earlier order and refused to grant approval to the petitioners herein for the action of dismissal against the respondent No.1. It may be made clear that the finding is that there was a shortfall in the payment of one month's wages as the increase in wages by the Settlement of 31st December, 1995 had not been taken into consideration.

2. At the hearing of this petition on behalf of the petitioners their learned Counsel contends that the impugned orders disclose an error of law apparent on the face of the record. It is pointed out that the entire case of the respondent is based on nonpayment of the wages purported to be calculated based on the settlement dated 31st December, 1995. It is pointed out that clause 2 of the said settlement provided that both the parties agree that the agreement will be subject to the approval "of the Board of Directors of the Air India Limited". It is pointed out that the Board gave approval to the settlement on 27th March, 1996. The application for approval by the petitioner filed before the

Presiding Officer, National Industrial Tribunal was on 15th March, 1996. It is, therefore, submitted that the agreement had not come into force as on 15th March,June, 1996 when the application was moved which was received by the respondent No.1 on 16th March, 1996 and consequently the finding by the learned Presiding Officer discloses an error of law apparent on the face of the record. Alternatively it is submitted that though there was a settlement entered into on 31st December, 1995 that settlement was not acted upon. For that purpose reliance is placed on various documents annexed with the petition. It is then pointed out that subsequent settlement was entered into on 5th May, 1996 and it is this settlement which is acted upon. This settlement, therefore, is also after 15th March, 1996 and consequently it could not be said that the petitioners herein had miscalculated the quantum of one month's salary payable to the respondent No.1. For the aforesaid reasons also it is submitted that the orders are liable to be set aside.

. On the other hand on behalf of the respondent No.1, who appears in person, it is submitted that the petitioners had acted on the settlement on 31st December, 1995. Reliance is placed on salary vouchers to show that amounts in terms of settlement of 31st December, 1995 had been paid to employees who were entitled to by the petitioners before 15th March, 1996. Once that be the case, the settlements have been acted upon and, therefore, the order of the Tribunal is justified. Alternatively it is submitted that considering that the settlement itself does not provide for the date on which it will come into force considering the language of Section 19(1)

of the Industrial Disputes Act, 1947 as no date is specified the agreement is deemed to have come into force on the day the settlement was signed by the parties. In the instant case the settlement was signed on 31st December, 1995 and, therefore, that is the date on which the settlement has come into force. It is, therefore, submitted that the learned Tribunal has not committed any error of law in recording a finding that the settlement had come into force on 31st December, 1995. It is lastly urged that the material on which the petitioners are now relying to contend that the settlement had not come into force on account of various acts by several parties cannot be gone into by this Court in the exercise of its extra ordinary jurisdiction as these materials were not placed before the Industrial Tribunal and it is for the first time that these materials are now sought to be placed before this Court. The petitioners, it is pointed out, cannot place new material and/or call upon the court to place reliance on that material which was not available for consideration by the Industrial Tribunal. This Court, therefore, ought not to consider the said contention urged on behalf of the petitioner and/or ignore the material in the form of documents which are sought to be relied upon by the petitioners. For all the aforesaid reasons the respondent No.1 in person prays that the order of the Industrial Tribunal be not interfered with.

3. From the above, the main question which comes for consideration is whether the settlement dated 31st December, 1995 had become operative on 31st December, 1995. If the answer to this question is in the affirmative then the finding of the Tribunal will have to be supported and the petition

rejected.

4. A few facts may be now set out to enable this Court to consider the controversy which has arisen. The respondent on 6th February, 1990 was apprehended by the Customs Authorities for being involved in smuggling activities. An order for detention under COFEPOSA. was passed on 22nd February, 1990. A charge sheet was served on him on 31st January, 1992. Earlier to that he had been suspended by order of 6th February, 1990. The Enquiry Officer gave his findings on 30th June, 1995. An order of dismissal of the respondent No.1 came to be passed on 6th December, 1995 which was to come into effect from the date of communication of the order to the respondent No.1. That order along with the application was served on the respondent No.1 on 16th March, 1996. There is no dispute that the application as required by law had been made under Section 33(2)(b) of the I.D. Act by the petitioner herein. An employer seeking approval under Section 33(2)(b) has to satisfy (1) There is an order of dismissal or discharge; (2) That they have paid wages for one month and (3) An application had been made by the employer to the authority before which the proceedings are pending for approval of the action taken by the employer. In the instant case the respondent No.1 was dismissed from service. An application for approval before the Competent Tribunal was made and the petitioner was offered wages for one month. The only dispute is regarding the quantum of the said wages.

5. At the outset it may be mentioned that the learned Industrial Tribunal has also recorded a finding that the

enquiry conducted against the respondent No.1 suffers from violation of principles of natural justice and fair play and further that the findings are perverse. Consequences of such findings are that the petitioner is permitted to lead evidence de novo before the Tribunal in support of their allegations of misconduct. See Shankar Chakravarti v. Britannia Biscuit Co. Ltd. and Anr. AIR 1979 SC 1652. The petitioners in fact have moved such an application. The law in the subject has now been answered by the Apex Court in the judgment in Karnataka State Road Transport Corporation v. Smt. Lakshmidevamma & Anr. 2001 AIR SCW 1981 1981. It is no doubt true that the stage at which the application can be moved considering the majority judgments are at the stages as set out in the Judgment. In the instant case, however, such an opportunity was sought in the application for approval dated March 15, 1996 the consequence of that would be on the Tribunal having come to the conclusion that the inquiry has been conducted contrary to the principles of natural justice and fair play and/or the findings are perverse ought to grant an opportunity to the respondent No.1 to lead evidence afresh in support of the misconduct if the opportunity had not been refused.

6. The real question, however, is that if there has been non-compliance of the requirement of the proviso to Section 33(2)(b) then in that event and if approval has been rejected there is no question of the petitioners having an opportunity once again of leading evidence to prove misconduct before the Tribunal in an application which is pending under Section 33(2)(b). The law now stands settled by the judgment in

Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Shri Ram Gopal Sharma & Ors., AIR 2002 SC 643. The question that has to be answered is, whether in fact the settlement had come into force. There is no dispute that the settlement was signed on behalf of the Union as also by representative of the petitioners on 31st December, 1995. But what is relevant and needs to be reproduced are the clauses 2, 6, 7 and 12 of the said settlement which read as under:-

> 2. Both the parties agree that this agreement will be subject to the approval of the Board of Directors of Air India Ltd.
>
> 6. Applicability: This settlement is in respect of all workmen covering non-technical and technical categories represented by AIEG.
>
> 7. Period of settlement: This settlement covers the period 1.9.90 to 31.12.91 and 1.1.92 to 31.12.96 respectively.
>
> 12. Both the parties agree that an amount ranging from Rs.12,000/- at the minimum and Rs.20,000/- at the maximum on different slabs will be paid by way of repayable advance in January, '96 against arrears arising out of this settlement, and the remaining arrears amount after adjusting this advance will be paid on mutually agreed dates subject to financial position of the Company."

These additional clauses apart from clause (2) also have been reproduced as on behalf of the respondent No.1, who is appearing in person, has placed reliance upon the receipts issued by the petitioner in respect of some of its employees to show that advances as payable in terms of clause 12 of the settlement have in fact been paid to the employees. There is also no dispute that the settlement does not provide for on what date it will come into force except that it will cover the period period from 1st September, 1990 to 31st December, 1991 and 1st January, 1992 to 31st December, 1996 and covers all workmen covering non-technical and technical categories represented by AIEG. Section 10(1) of the I.D. Act reads as under:-

> "A settlement shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute."

The respondent No.1 would be right in contending that in the absence of the date in the settlement on which date it will come into operation by virtue of Section 19(1) it would be the date on which the settlement was signed on 31st December, 1995. What, however, will be the effect of clause 2 of the settlement as reproduced earlier, as both the representative representing the management of the petitioner and the representative of the Union agreed that the agreement will be subject to the approval of the Board of Directors of Air India Limited. In other words, therefore, even though the

settlement has been signed it would be of no effect until and unless the Board of Directors grants approval. It is no doubt true that it is a Settlement in Form "H". Settlement is a contract between two parties. However, by virtue of the provisions of the Industrial Disputes Act, 1947 it has a statutory implications both for the management as well as the respondent No.1. The language of clause 2 would be that the settlement would not be operative unless the Board of directors of the petitioner grants its approval. If there was no approval what will be the effect need not be looked into today as that does not arise. Admittedly, the board did grant approval on 27th March, 1996. The effect of this approval is that the settlement gets post facto sanction on 27th March, 1996, The effect is that it is only from the date the Board grants approval can the settlement be said to be a settlement by law binding on the petitioners though it will relate back to 31st December, 1995. It is by now well settled that the company or corporation can be bound any contract by persons duly authorised in law. The very fact that the representative of the petitioners had held out in the settlement that the settlement would come into effect on the Board granting approval and the other party to the settlement agreeing to it, it was a clear pointer to the union that the settlement to become effective required the sanction or approval of the Board. It would, therefore, be clear that the settlement become operative consequent to the board granting approval on 27th March, 1996. That approval would be deemed to be post facto approval for the settlement which was entered into on 31st December, 1995.

. The next question, then is whether the petitioners as on 15th March, 1996 were bound to calculate the wages in terms of the settlement which got approval by the board of the petitioner on 27th March, 1996 or based upon the emoluments or wages existing on that day i.e. 15th March, 1996. The effect of the approval on 27th March, 1996 would be that the wages in terms of the Settlement would have to be paid from 31st December, 1995. That could not have been contemplated on 15th March, 1996, the date on which the application was made as on that date the petitioners were bound to pay wages de hors the settlement. The petitioners have so paid and on that count there is no dispute.

. It may only be pointed out that the respondent No.1 in person has in fact produced some supporting documentary evidence to show that the petitioners themselves had acted in terms of the settlement of 31st December, 1995 by making atleast some payments in terms of Clause 12 of the settlement. In my opinion that can be of no assistance in so far as the legal issue involved. Considering that there would be approval the officers of the petitioners may have released amounts in advance. That would not make the settlement in force on the date the amounts were paid. At the highest this was pending post facto approval to the settlement. The respondent is not be entitled to take advantage of the said fact. The settlement had not come into force on 31st December, 1995 or on 15th March, 1996. Mere payment of some advance, therefore, is of no consequence, to hold that the settlement had come into force on 31st December, 1995 or was in force on 15th March, 1996.

7. It was also urged on behalf of the petitioners herein placing reliance on the judgment of a learned single Judge of this Court in Balmer Lawrie & Co. Ltd. vs. Waman B. More and Anr., 1981 (42) F.L.R.272 that in case of shortfall it was open to the petitioners to have deposited the difference of shortfall before the Industrial Tribunal and that the petitioners have in fact so done. For the view to be taken it is not necessary for this Court to go into that issue.

8. Considering the above, in my opinion the order passed refusing to grant approval for the act of dismissal will have to be set aside. It will have to be held that the petitioners had complied with the requirement of payment of one month's wages. Once that be the case the impugned order dated 23rd July, 199 and 20th December, 2002 to that extent will have to be set aside. The matter has to be remanded back to the National Industrial Tribunal for giving fresh opportunity to the petitioners herein to lead evidence on the allegation of misconduct levelled against the respondent No.1. Needless to say that the respondent No.1 will be entitled to participate in the proceedings and lead his own evidence.

9. Rule made absolute in terms of paragraph 8. No order as to costs.

10. Considering that the application for approval is of the year the the year 1995 the Presiding Officer of the National In petitioners have in fact so done. For the view to be taken it Tribunal when appointed to dispose of the application w is not necessary for this Court to go into that

issue. period of six months from the date the Presiding Officer takes charge.

. Parties/Authorities to act on an ordinary copy of this order duly authenticated by the Associate/Personal Secretary of this Court.

(F.I. REBELLO, J.)